

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 14, 2021**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES DEAN CLOUD (01), and  
DONOVAN QUINN CARTER  
CLOUD (02),

Defendants.

No. 1:19-cr-02032-SMJ-1  
1:19-cr-02032-SMJ-2

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
RECONSIDERATION**

Before the Court, without oral argument, is Defendant James Dean Cloud's Motion to Reconsider Ruling on Fair-Cross-Section Challenge, ECF No. 456. Defendant asks the Court to reconsider its November 23, 2021 oral ruling denying his Motion to Dismiss Third Superseding Indictment, ECF No. 352. After orally denying Defendant's motion, the Court memorialized and supplemented its ruling in a written Order, ECF No. 474. Having reviewed the file and relevant legal authorities, the Court denies Defendant's motion for reconsideration.

Reconsideration "is an 'extraordinary remedy' usually available only when (1) the court committed manifest errors of law or fact, (2) the court is presented with newly discovered or previously unavailable evidence, (3) the decision was

1 manifestly unjust, or (4) there is an intervening change in the controlling law.”  
2 *Rishor v. Ferguson*, 822 F.3d 482, 491–92 (9th Cir. 2016) (quoting *Allstate Ins. Co.*  
3 *v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)); *McDowell v. Calderon*, 197 F.3d  
4 1253, 1255 n.1 (9th Cir. 1999) (en banc). Defendant fails to meet this standard.

5 Defendant submits that at the hearing on his motion, the Government  
6 presented misleading evidence alleging that the group of persons who responded to  
7 the summonses for jury service overrepresented the Latino population. ECF No.  
8 456 at 2. Defendant does not appear to dispute the accuracy of this claim, only that  
9 it does not tell the complete story. Defendant simply reiterates that the calculations  
10 set forth by his expert, Mr. Martin, remain correct—*i.e.*, that Latinos were  
11 underrepresented in the grand jury pool. *Id.* at 3. Defendant also reiterates that this  
12 underrepresentation occurred in part because the Clerk’s Office failed to follow the  
13 Jury Plan to the letter.

14 As discussed in the Court’s Order Denying Motion to Dismiss Third  
15 Superseding Indictment, ECF No. 474, the Court agrees with Defendant as to the  
16 above allegations. But the Court based its decision on the legal determination that  
17 the underrepresentation of Latinos and Native Americans was not legally significant  
18 and therefore did not rise to the level of a constitutional violation. *Id.* at 16–17.  
19 Nothing presented in Defendant’s present motion for reconsideration alters that  
20 conclusion.

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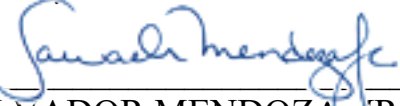
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3 Accordingly, **IT IS HEREBY ORDERED:**

4 **1.** Defendant's Motion to Reconsider Ruling on Fair-Cross-Section  
5 Challenge, **ECF No. 456**, is **DENIED**.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
7 provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals  
8 Service.

9 **DATED** this 14<sup>th</sup> day of December 2021.

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11 SALVADOR MENDOZA, JR.  
United States District Judge